

FY 2008 Annual Program Performance Measures

DEPARTMENT:

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH

APPROPRIATION UNIT: Boards, Authorities, and Commissions

PROGRAM: Employment and Labor Relations

Description of the Bureau/Agency:

The Michigan Employment Relations Commission (MERC), supported by the Bureau of Employment Relations, is statutorily charged with resolving labor disputes between public and private sector employers, labor organizations, and employees. The Bureau and its staff achieve this mandate by resolving unfair labor practices; conducting elections; handling bargaining unit clarification issues; mediating collective bargaining disputes; appointing fact finders and arbitrators to resolve bargaining impasses; enforcing statutes which protect bargaining rights of public and private sector employees; fostering cooperative programs between public and private sector labor and management; and offering education and training. The Commission also provides fact finding, compulsory arbitration, grievance arbitration, and grievance mediation. The Bureau of Employment Relations administers the Public Employment Relations Act, the Labor Relations and Mediation Act, and the Compulsory Arbitration Act (Act 312 of 1969).

Vision Statement:

The vision of the Bureau of Employment Relations is to promote excellent labor-management relations.

Mission Statement:

The mission of the Bureau of Employment Relations is to provide high quality support to the Michigan Employment Relations Commission, and to foster peaceful, cooperative, and effective public and private sector employer-employee relationships by neutral and timely resolution of labor disputes, application of conflict resolution processes, and education and training.

FUND SOURCE:

State Restricted Funds - Our agency had been had been funded with GF/GP dollars for many years. Due to State budgetary issues, these funds were replaced by Corporation and Securities fees some years ago.

LEGAL BASIS:

Public Act 345 of 2006

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CUSTOMER IDENTIFICATION:

Customers - public and private sector employers and employees, labor organizations, legislators, management; program staff of the Department of Labor and Economic Growth and other state and federal agencies; outside vendors, and citizens of the State of Michigan

Stakeholders – Governor’s Office; citizens of the State of Michigan

Main Components of the Bureau:

Administration Division

Formulates and implements activities that direct and manage Bureau activities.

Labor Relations Division

The Labor Relations Division (which includes Labor Representation Elections) works in coordination with the State Office of Administrative Hearings and Rules (SOAHR) to administer the unfair labor practice and union representation election provisions of the Public Employment Relations Act and the Labor Relations and Mediation Act. These laws apply to public sector employers and employees, and labor organizations, as well as to private sector employers and employees, and labor organizations over which the National Labor Relations Board (NLRB) will not assert jurisdiction. Our agency’s statutory mandate includes determining appropriate bargaining units, ordering and conducting union representation elections, and resolving issues in those elections, such as the impact of objectionable conduct and voter eligibility. Through the Labor Relations Division working in conjunction with SOAHR, the Commission reviews appeals of ALJ decisions and functions as an adjudicative body.

Mediation Division

The Mediation Division assists in the negotiation of collective bargaining contracts and the settlement of grievances between employers, labor organizations and their employees in both the public and private sectors. Mediation is provided as a service to the parties to assist in peaceful resolution of disputes.

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Performance Data and Bureau Accomplishments in 2008

While vacant positions remained unfilled, our Bureau continued to successfully process a significant number of case filings in this challenged economy. In FY2008, with reduced staff and limited budget, our Bureau handled the following filings without incident:

516 Unfair labor practices and/or representation petitions processed

140 Union representation elections conducted

85% Certifications of elections issued within 15 days of the election

2210 Notices of open contracts received and processed

1123 Mediation conferences held

151 Act 312 and Fact Finding petitions filed and processed

Bureau Accomplishments

Increased Productivity and Reduced Staff

The number of filings processed by our agency remains steady or increases in this challenged economy. At the same time, we worked with a reduced staff of less than 20 employees during most of the past year - with two positions remaining unfilled and one employee on an extended medically-related leave of absence.

Our Bureau continues to receive and process an increasingly number of Petitions for Fact Finding. (See p. 8 for explanation of Fact Finding procedure.) A chart indicating the huge increase in the number of Fact Finding Petitions

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filed in the last quarter is attached. Significantly, our Bureau pays the entire cost of Fact Finding proceedings; thus, these increased filings have resulted in an inordinate expenditure of time by Bureau staff and increased demands placed on our budget.

Public Education Endeavors

As part of our mission to offer education and training, Bureau staff worked with MERC on the following educational endeavors:

Our agency finalized the agenda and arrangements for a full-days' training and refresher program for MERC's Panel of Act 312 Arbitrators and Fact Finders in October 08. This program was conducted in collaboration with and via the sponsorship of the Alternative Dispute Resolution program at MSU College of Law. Some 100 persons attended and participated in 6 workshops, thereby gaining expert information on such timely, relevant and fast-changing topics, as employee health care coverage, retirement benefits, and recent changes in MERC case law.

MERC/BER worked to complete revisions, post on-line, and prepare for distribution a more than 25-page informational booklet - MERC's 2007 version of the "Guide to Public Sector Labor Relations [Law](#) in Michigan: Law and Procedure before the Michigan Employment Relations Commission."

MERC's Arbitrator Selection Process was revised to reflect legal trends [that give](#) deference to the arbitrability of labor disputes.

Our agency prepared the "MERC Corner" - a newsy column touting agency happenings in the Lawnotes publication – the newsletter [published](#) quarterly by the Labor and Employment Law section of the State Bar of Michigan.

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We revised, distributed, and placed on-line various informational sheets about our agency: including Frequently Asked Questions and Answers about MERC/BER and about Employment, as well as a Guide to Filing an Unfair Labor Practice Charge, and a Fact Sheet detailing a Union's Duty of Fair Representation.

Bureau staff continued to educate our constituents during various speaking engagements, including presentations made to the State Bar of Michigan, Michigan Education Association, Institute of Continuing Legal Education, Michigan Public Employer Labor Relations Association, Michigan State University Labor Education program, and the Michigan Chapter of International Personnel Management Association.

Interest Based (Collaborative Bargaining) training and assistance was provided for numerous parties, including: Central Michigan University, Ingham County, Meridian Schools, Lakeshore Schools and Delton Kellogg Schools.

GOALS AND OBJECTIVES

The Bureau of Employment Relations/Michigan Employment Relations Commission actively seeks to create and foster a positive labor relations environment. Our agency provides employers and labor organizations with avenues to reduce the likelihood of labor disputes, as well as administrative procedures to more promptly resolve such disputes should they occur. All services offered by the Bureau and provided to parties are without cost; these free-of-charge services assist to create a more positive labor climate and to increase the perception of Michigan as a premier site to locate, retain and grow jobs.

In FY2008, we accomplished agency goals and objectives, although we worked with a reduced staff and a limited budget. Highlights of our accomplishments include: numerous presentations made by the Director and Bureau staff to educate and train constituents as to the various laws administered by our agency and their legal rights and obligations under those laws - a vital part of our Bureau's mission. Significantly, we have done so without any outlay of State funds – instead, during this period of challenge, we have collaborated with our partners, such as the MSU College of Law and MSU College of Labor and Industrial Relations – entities which have graciously offered to present training programs and to assist us in updating informational, educational booklets and other materials for our constituents.

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We have also succeeded in providing a prompt response to any labor dispute that occurs and have marshaled forces to offer available avenues of dispute resolution at the first juncture. Our agency considers labor/management cooperation to be a vital part of our mission, and Bureau Staff sit on the Executive Board and participate extensively in the activities of the Labor Management Association of Michigan, as part of our effort to improve the labor climate in our state.

GOALS

Promote positive labor relations by establishing joint labor/management committees and facilitating collaborative bargaining relationships.

This goal has been met.

The Bureau Director and two members of her staff serve on the Executive Board of the Michigan Labor Management Association. In this capacity, they attend quarterly meetings of the Association and actively assist with the agenda and participate in the organization's Annual Conference, at which both management and labor receive training and information on how to develop and maintain a positive labor relationship and to collectively and collaboratively bargain on complex issues as health care and retirement benefits.

Bureau staff has facilitated collaborative bargaining relationships between numerous employers and labor organizations, including: Ingham County, Central Michigan University, Meridian Township, Lakshore Schools, Delton Kellogg Schools, and Holland Board of Public Works.

We have provided mediation services for high school student collective bargaining trainings on numerous occasions.

Bureau staff also provided mediation and judging assistance at the regional conference of the Student Alternative Dispute Resolution competition at MSU College of Law.

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We are continuing to distribute an informational sheet detailing MERC's collaborative processes.

Conduct educational seminars and other materials for labor and management officials and/or arbitrators or fact finders that describe agency services and structure, and employer, union and employee rights and obligations under laws administered by MERC.

This goal has been met.

This goal was achieved on October 31 when we conducted a seminar for MERC's Act 312 arbitrators and fact finders. This seminar was conducted with the financial support and courtesy of the MSU College of Law. We continue to work with our partners, who have graciously offered to present programs for the Bureau (and bear the financial burden for such programs), when we are constrained from doing so because of budgetary issues.

Also, during the past fiscal year, MERC staff have presented to numerous entities in programs that describe agency services and structure and the rights and obligations of parties as set forth in the laws administered by our agency. These entities include presentations made to: Institute of Continuing Legal Education – Labor and Employment Section; Michigan Public Employer Labor Relations Association; State Bar of Michigan, Labor & Employment Law Section; Michigan Chapter of the International Personnel Management Association; Michigan Education Association Annual Conference; Police Officers Labor Council; Service Employees International Union – Health Care, International Payroll Association – Michigan Chapter, and elsewhere.

GOAL – Ensure that all representation elections are conducted impartially under the Rules and Regulations of the Michigan Employment Relations Commission, promoting employee free choice in the election and ensuring the continuity of business operations.

This goal has been met.

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No objections to the results of or conduct surrounding a representation election alleging misconduct by MERC or its election officers have been filed and found to be with merit during this fiscal year.

CHALLENGES

To provide statutorily-required services with our current complement of employees. We note that more than 60% of our staff is eligible to retire in the next 5 years. Succession planning is imminent. DLEG has commenced work to address this issue.

Since the Bureau of Employment Relations was established more than 40 years ago, we have experienced a continuous reduction in the number of employees on our staff. In 1983, 46 employees worked at our Bureau. This number has steadily declined; in 1992, we employed 40 employees, while by 1998 our numbers had been reduced to 28 employees. We remained at 28 until the 2002 retirements, after which, we were left with 23.5. After the transfer of our ALJs and one support staff to SOAHR and the addition of one-half FTE, our current organizational chart includes 21.5 positions. Significantly, 2.5 of those positions are vacant (two mediators and a half-time support staff). Our challenge is to provide timely responses to requests for basic services as required by statute with this continuous depletion of staff and legislative allocation. A chart indicating the steady and continuous decline in Bureau staff is attached.

To continue to provide statutorily-required dispute resolution services with our current or a reduced budget and to provide a quality panel of outside decision makers. We need a stable, increased funding stream in order to more efficiently meet our customer needs and to ensure that we may continue to provide all of our statutorily-mandated services to our constituents.

We need to increase the daily rate of \$650 paid to our panel of neutral decision makers in our Act 312 Arbitration and Fact Finding procedures and to locate a stable, increased funding stream for all of the services provided by our agency.

By way of background, Act 312 of 1969 and Fact Finding are dispute resolution procedures provided by MERC, and both are mandated by state statutes, MCL 423.231, et seq and MCL 423.25, respectively. Act 312 provides for compulsory arbitration of unresolved contract disputes in municipal police and fire departments. Employees covered under Act 312 include municipal police

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officers and firefighters, as well as emergency medical personnel and emergency telephone operators employed by municipal police or fire departments. Under Act 312, if the parties are unable to reach voluntary resolution of their contract terms, a three-member arbitration panel issues an award based on criteria set forth in the statute. The award establishes the terms of the parties' collective bargaining agreement in the public safety arena.

Fact Finding is the final impasse resolution procedure available to public sector employees other than public safety personnel. If bargaining and mediation have failed to result in a final collective bargaining agreement, either or both parties may petition for fact finding. The neutral fact finder, following a process set forth in MERC Rules, will issue a non-binding recommendation for settlement of the contractual dispute.

In 1999, the daily rate paid to our neutral decision makers in Act 312 and Fact Finding proceedings was increased from \$450 to \$650. **For nearly 10 years, our panel members have not had an increase in their daily rate.** The current per diem of \$650 is significantly below what neutrals receive for their services in the private sector which frequently exceeds \$1,000 per day. At this time, many neutrals handle MERC-related cases as a public service and a favor to the agency. In addition, the cost of reimbursable expenses paid to our decision makers, such as hotel, food, and mileage costs have increased minimally; yet, the appropriated amount for reimbursement has remained the same or increased very slightly. It is essential that the daily rate, as well as the amount of expense reimbursement, be increased if we are to assure a high quality panel of decision makers.

In sum, we need a stable and increased funding stream for all of the dispute resolution services that our agency provides in order to more efficiently and ably meet our customer needs.

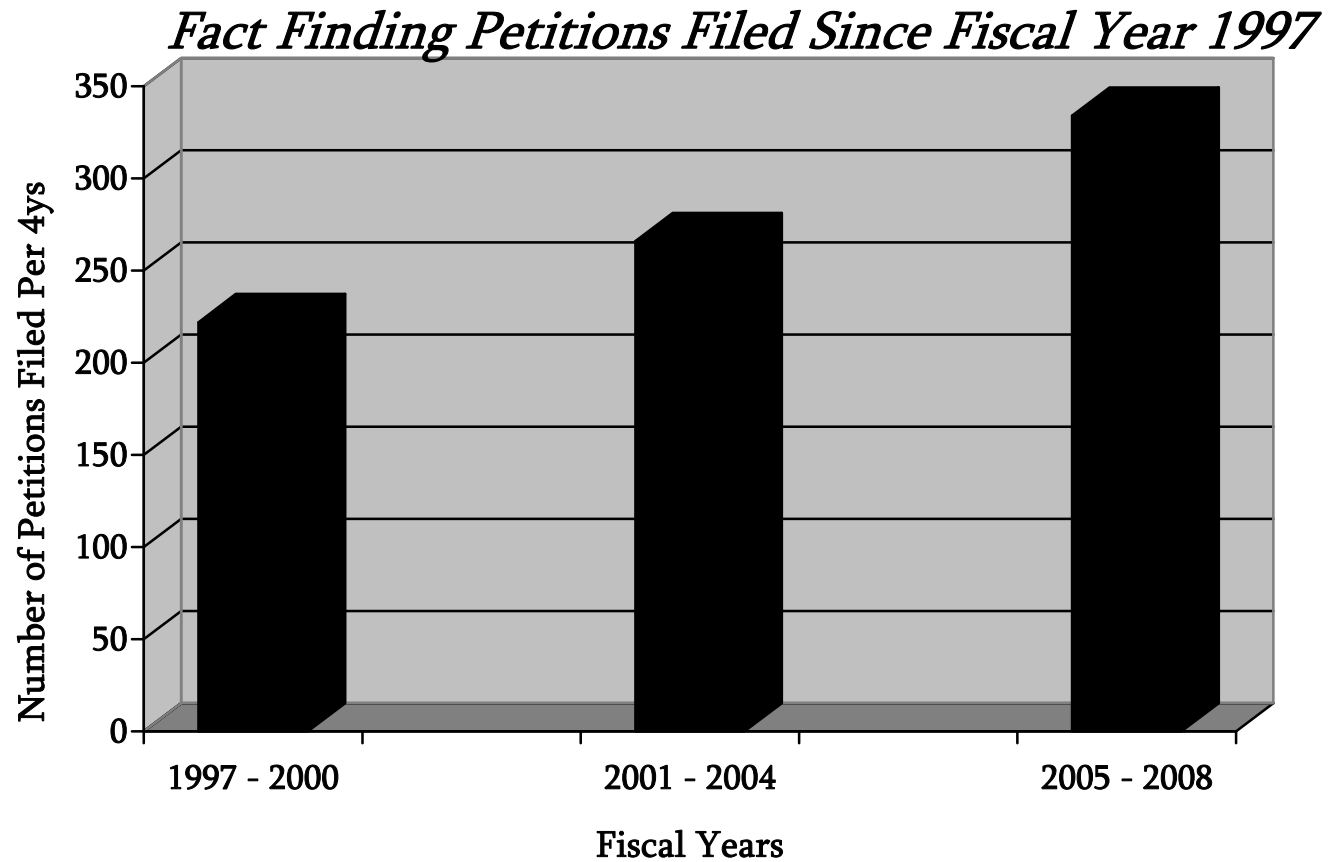
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Bureau of Employment Relations Decline in Number of FTEs

